

**MEMORANDUM OF AGREEMENT
FOR
TRANSFER OF WATER LINE**

I. PARTIES:

This Memorandum of Agreement (MOA) is entered into between Ellsworth Air Force Base (hereinafter the "Government") and the City of Box Elder (hereinafter "Box Elder"). The intent of this MOA is to facilitate the transfer of the water supply line currently under construction and more particularly described in Attachment B, from the Government to Box Elder. More particularly, the intent of this MOA is to ensure that Box Elder has the ability to accept the transfer of the water supply line and all of the covenants, promises and obligations of the Government under certain Memoranda of Agreement with landowners in an area located east of Ellsworth Air Force Base (EAFB), South Dakota.

II. PURPOSE AND AUTHORITY:

a. WHEREAS the Government is in the process of constructing a water supply line as part of Record of Decision for Operable Unit 11 dated April 1997, to supply water and access to water for landowners whose land is located directly over an aquifer, or in a defined buffer zone around the aquifer, as indicated on Attachment B; and

b. WHEREAS the Government has entered into Memoranda of Agreement with many landowners, and will enter into Memoranda of Agreement with the remaining landowners indicated in Attachment A; and

c. WHEREAS the Memoranda of Agreement with the landowners are contracts between the Government and the landowners, that require the Government to fulfill certain promises and obligations for a defined time period, and require the landowners to comply with certain conditions; and

d. The Government enters into this MOA pursuant to 42 U.S.C. Sections 9601(23), 9604(a), and 9620, Executive Order 12580 of January 23, 1987, 10 U.S.C. 2701 et seq, 10 U.S.C. 2481, and Air Force Instruction 32-1061.

III. RIGHTS AND OBLIGATIONS:

a. The Government agrees to transfer the water supply line currently under construction by the Government, more particularly described in Attachment B, which is incorporated into this MOA by this reference, to Box Elder, contingent upon the following:

1. The Government has budgeted \$217,142 to be used for the sole purpose of assisting Box Elder in constructing a new water tower. Box Elder agrees to use the funds to construct a

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new water tower with a minimum capacity of at least 200,000 gallons and an overflow elevation of 3,290 feet above Mean Sea Level. This should be sufficient to support existing demands on the Box Elder water supply system, and to support current and future increased demand on the system that will result from the transfer of the EAFB water supply line described in Attachment B, to Box Elder. Said water tower must be completely constructed and fully operational within 1 year of the date of the signing of this MOA.

2. The Government agrees to complete construction of the water supply line in accordance with the plans and specifications entitled "OU-11 Phase 1 Watermain Extension," dated September 1998, and "OU-11 Phase 2 Watermain Extension," dated December 1998.

3. Upon completion of the water supply line, and upon signing of this MOA, the Government agrees to transfer the water supply line to Box Elder on a DD Form 1354, which is attached and incorporated herein as Attachment C. The Government shall provide Box Elder with copies of the licenses and easements for installation of the water supply line, which are attached and incorporated herein as Attachment D.

4. Box Elder agrees to assume all of the responsibilities, liabilities and promises of the Government in the Memoranda of Agreement with the landowners with respect to the supply of water to landowners and maintenance of the water supply line. Copies of said Memoranda of Agreement will be provided to Box Elder upon transfer of the water supply line to Box Elder, and which are incorporated herein by reference as Attachment A. Box Elder's assumption of responsibilities, liabilities and promises of the Government is limited to the scope of the Memoranda of Agreement with landowners and does not extend to the Government's responsibilities or liabilities, if any, for injury to persons or property that may be claimed to result from the alleged contamination of the plume.

5. Box Elder agrees to continue to operate the water supply line in accordance with the terms of the Memoranda of Agreement of the landowners with the Government, until such time as the Memoranda of Agreement shall terminate by their terms. Box Elder may not enter into separate and independent agreements with landowner who have MOAs with the Government for additional hookups beyond what is allowed under their MOA with the Government, unless the Government approves the additional hookup and modifies the landowner MOA in writing. Additionally, for any landowners located in the "buffer zone," as shown on Attachment B, Box Elder may only allow additional hookups if the landowners are in full compliance with their Memoranda of Agreement with the Government. Box Elder may allow other landowners who do not have MOAs with the Government, to access the water supply line as long as any additional hookups do not affect Box Elder's ability to meet the terms and conditions contained in the Memoranda of Agreement in Attachment A, and those set forth in Section III, paragraph a. (5) of this MOA.

6. Box Elder agrees to reserve sufficient capacity of the water supply line to supply water to all landowners in Attachment A in accordance with their entitlements in their MOAs

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with the Government. In addition, Box Elder agrees to reserve additional capacity to supply 500 gallons of water daily to up to 20 additional residences if needed by the Government, until such time as the Record of Decision for Operable Unit 11, dated April 1997, is fully satisfied and shall be terminated. The Government shall notify Box Elder of any additional residences to be hooked up to the water supply line, and shall pay all costs associated with the initial hook up to the water supply line. Additionally, if the Government is required to provide water to these additional residences pursuant to the April 1997 Record of Decision, then Box Elder shall bill the Government for these costs in compliance with the terms of this MOA.

7. Box Elder agrees that the charges for additional water hookups allowed under the Memoranda of Agreement with the landowners shall be the same as that charged to other Box Elder resident users located outside the city limits for the same service. Additionally, the water rates charged to landowners who are required to pay for their water use pursuant to the landowner Memoranda of Agreement, shall be the same as that charged to other Box Elder resident users located outside the city limits for water.

8. Upon transfer of the water supply line to Box Elder, Box Elder shall bill the Government on a monthly basis for the cost of water supplied to those residents entitled to receive water free of charge under their Memoranda of Agreement with the Government. The water rates charged to the Government for the water use by these landowners shall be the same as that charged to other Box Elder resident users located outside the city limits for water. A list of names of those individuals and their addresses shall be provided to Box Elder upon completion of the water supply line. All other residents supplied by the water supply line shall be billed for their water use by Box Elder in accordance with the terms of this MOA. The Government shall be entitled to audit Box Elder's records no more than twice each year to ensure proper reconciliation of actual water usage with amounts charged to, and paid by, the Government.

9. Enforcement of restrictions and limitations contained in the Memoranda of Agreement with landowners shall be the responsibility of the Government. Each calendar year Box Elder shall provide the Government with a record for each landowner indicating average monthly water usage and charges therefore. Said record shall be provided to the Government no later than 31 December of each year.

b. If either party to this agreement fails to fulfill all of its obligations under the terms of this MOA, the MOA shall be deemed null and void. Should this MOA be deemed null and void for failure to perform under this MOA, neither party shall be legally liable to the other for any resulting damages, except that the funds provided to Box Elder for the construction of the water tower, as described in section III, paragraph a. (1) above, shall be returned to the Air Force in full, and Box Elder shall transfer the water supply line back to the Government.

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IV. ADDITIONAL TERMS:

a. No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this MOA, or to any benefit that may arise therefrom.

b. It is understood and agreed that the Government will retain no liability for repair or maintenance of the water supply line, any lateral water lines or other related equipment constructed by the Government once the water supply line is transferred to Box Elder. Neither shall the Government be liable for any damages to personal property nor for personal injury caused by the presence of such water supply line, pipes, or related equipment once said transfer is completed unless such damage or injury is proximately caused by the negligence of the Government or its agents following such transfer.

c. All the terms, provisions, and conditions contained in this MOA shall be binding upon and inure to the benefit of the parties hereto.

d. This instrument, along with those documents incorporated herein and attached as Exhibits hereto, embodies the whole of the agreement of the parties. There are no other promises, terms, conditions, or obligations other than those contained herein; and this MOA shall supersede all previous communications, representations, or agreements either verbal or written, between the parties hereto. This MOA may be modified or amended only by written mutual agreement signed by the parties hereto.

e. Each person who signs this Memorandum of Agreement in a representative capacity warrants that he or she is fully empowered and duly authorized to do so.

The signing parties hereto PROMISE AND AGREE to fulfill the terms and conditions of this Memorandum of Agreement.

For the City of Box Elder

3-20-00
(DATE)

William J. Maher
WILLIAM J. MAHER, Mayor

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State of South Dakota, County of Meade. On this the 20th day of March 2000, 2000, before me Mercedes C. Smith, the undersigned officer, personally appeared William J Maher, known to me or satisfactorily proved to be the person whose name subscribed to the within instrument and acknowledged that he executed the same for the purposes herein contained.

In witness whereof I hereunto set my hand and official seal

Mercedes C. Smith
Notary Public

My commission expires 13 MAY 2005.

UNITED STATES AIR FORCE

20 MARCH

(Date)

Anthony F. Przybylski

ANTHONY F. PRZYBYLSKI, Colonel, USAF
Commander, 28th Bomb Wing

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CERTIFICATE OF AUTHORITY

I, Paula J. Carpenter, hereby certify that I am the
Finance Officer of the City of Box Elder, the corporation described in
and which executed the foregoing agreement with the United States of America; that said
corporation is organized under the laws of the State of South Dakota; that the corporation seal
affixed to said instrument is the seal of said corporation; that William J. Maher,
who executed said agreement as Mayor of said corporation was then
Mayor of said corporation and has been duly authorized to execute said
instrument on behalf of said corporation; that I know the signature of said
_____; and that the signature affixed to subject instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
corporation this 21st day of March, 2000.

BY: Paula Carpenter
TITLE: Finance Officer

SEAL